IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.350/2005

Oriental Insurance Co. Ltd. ... Appellant
! through: Mr. Ram N.Sharma, Adv.

VERSUS

$ Satish Sharma & Ors. ... Respondents

^ through: Mr. Vijay Kumar, Advocate with
Mr. Hem Kumar Advocate for R-1

RESERVED ON : 09.05.2007

% **D**ATE OF DECISION: 15.05.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. The appeal under Section 173 of the M.V.Act 1988 is directed against the award dated 9.2.2005.

2. On 30.11.2003, injured Satish Kumar, sustained serious injuries in a road accident stated to be caused by the rash and negligent driving of the offending vehicle belonging to the respondent No.3, Nand Kishore.

3. Vide award dated 9.2.2005, Tribunal has directed the appellant insurance company to pay compensation of Rs.10,34,850/- to the injured. Break up of the compensation awarded is as follows:-

(i)	Medical reimbursement	:	Rs. 25,000/-
(ii)	Pain and suffering	:	Rs.1,00,000/-
(iii)	Permanent disability/loss of amenities	:	Rs.2,00,000/-
(iv)	Loss of earning capacity	:	Rs.6,76,350/-
(v)	Conveyance/attendant charges	:	Rs. 7,500/-
(vi)	Future treatment/artificial implant	:	Rs. 1,000/-
(vii)	Loss of marriage prospects	:	Rs. 25,000/-
	Total	:	Rs.10,34,850/-

4. Aggrieved by the amount of compensation awarded by the Tribunal, appellant insurance company has filed the present appeal.

5. Since the only issue involved relates to quantum of compensation, I shall only be noting such facts as are relevant for adjudication of said issue.

6. Injured was aged 26 years as on the date of the accident. He was a daily wager.

7. On account of injuries sustained by the injured, his

right leg was amputated below the knee. Permanent disability was assessed at 60%.

8. It is an admitted fact that the injured was hospitalized for the period 30.11.2003 to 24.2.2004 in Safdarjung Hospital.

9. In the light of afore noted backdrop facts, I shall determine the 'fairness' of the compensation assessed by the Tribunal.

10. The possession of one's own body is the first and most valuable of all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages.

11. The general principle which should govern the

assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in if he had not sustained the injuries.

12. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and non pecuniary damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money. Whereas, non pecuniary damages are those which are incapable of being assessed by arithmetical calculations.

13. As noted herein above, damages have to be assessed separately as pecuniary damages and non pecuniary damages. In the instant case, Tribunal has awarded Rs.7,09,850/- under the head 'pecuniary damages' and Rs.3,25,,000/- under the head 'non-pecuniary damages'. I shall deal with each head separately.

Non-pecuniary Damages:

14. Tribunal has awarded Rs.3,25,000/- under this head. Break-up of the compensation awarded under this head is as follows:-

(i)	Pain and suffering	:	Rs.1,00,000/-
(ii)	Permanent disability/ Loss of amenities of life	:	Rs.2,00,000/-
(iii)	Loss of marriage prospects	:	Rs.25,000/-

15. Learned counsel for the appellant contends that compensation awarded by the Tribunal under this head is excessive. He particularly stresses that award of Rs.2,00,000/- for permanent disability/loss of amenities of life is excessive.

16. In order to properly appreciate the contentions advanced by the learned counsel for the appellant, I note the following judgments:-

(i) *B.N.Kumar vs. D.T.C.,* 118 (2005) DLT 36.

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein Courts had awarded Rs.3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded Rs.75,000/- for 'pain and suffering' and Rs.2,00,000/- for 'continuing disability suffered by him'. Thus, a total of Rs.2,75,000/- was awarded under this head.

(ii) *Fakkirappa vs. Yallawwa & Anr.,* 2004 ACJ 141

In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered the injured, Division Bench of Karnataka High Court awarded following compensation under the head 'non-pecuniary damages':-

(i)	Pain and suffering	:	Rs. 50,000/-.
(ii)	Loss of amenities of life	:	Rs.1,00,000/-.
(iii)	Loss of marriage prospects	:	Rs. 50,000/-.
(iv)	Damages for amputation of leg below knee.	:	Rs.1,50,000/-.
(v)	Loss of expectation of life	:	Rs. 50,000/-.
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	Total	:	Rs.4,00,000/-
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(iii) *K.Shankar vs. Pallavan Transport Corporation,* 2001 ACJ 488

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%. A learned Single Judge of Madras High Court awarded the following compensation under the head 'non-pecuniary damages'.

(i)	For permanent disability	:	Rs.80,000/-.

(ii) Pain and suffering : Rs.50,000/-.

(iii) Loss of expectation of life and proper marital alliance : Rs.50,000/-.

(iv) For mental agony : Rs.1,00,000/-

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Total : Rs.2,80,000/-

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(iv) *M.Jaganathan vs. Pallavan Transport Corporation*, 1999 ACJ 366 :

In said case, injured aged 45 years sustained injuries in an accident on 21.6.1990. The injury sustained by the injured resulted in the amputation of his left leg above the knee. Division Bench of Madras High Court awarded following compensation under the head 'non pecuniary damages':-

(i) Pain and suffering : Rs.1,00,000/-.

(ii) Compensation for continuing permanent disability. : Rs.2,00,000/-.

(iii) Mental agony, torture and humiliation because of amputation : Rs. 75,000/-.

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Total : Rs.3,75,000/-

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(v) *Bhagwan Singh Meena vs. Jai Kishan Tiwari*, 1999 ACJ 1200 :

In said case, the injured sustained severe and serious

injuries on account of the road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded a compensation of Rs.3,00,000/- under the head non-pecuniary damages.

(vi) *Dr.Gop Ramchandani vs. Onkar Singh & Ors.*, 1993 ACJ 577 :

In said case, in an accident which had occurred on 17.12.1985, injured sustained injuries because of which his left leg was amputated resulting in 50% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of Rs.3,00,000/- under the head 'non pecuniary damages'. Break-up of the compensation under the said head is as under:-

(i)	Physical and mental agony	:	Rs.1,00,000/-.
(ii)	Permanent disability	:	Rs.1,00,000/-.
(iii)	Loss of social life and loss in profession	:	Rs.1,00,000/-.
	Total	:	Rs.3,00,000/-

(vii) *Jitendra Singh vs. Islam*, 1998 ACJ 1301 :

In said case, in an accident which had occurred on 14.02.1992, injured sustained injuries because of which his left leg was amputated resulting in 55% permanent disability. A Single Judge of Rajasthan High Court awarded a compensation of Rs.3,00,000/- under the head 'non pecuniary damages'.

(viii) *Iranna Vs. Mohammadali Khadarsab Mulla & Anr.* 2004 ACJ 1396 :

In said case, on 19.4.2000, injured aged 7 years met with an accident. Due to the said accident, he sustained grievous injuries resulting in amputation of his left leg below knee. Tribunal awarded following compensation to him under the head 'non pecuniary damages':-

(i)	Pain and suffering	:	Rs. 50,000/-.
(ii)	Loss of amenities, happiness,frustration	:	Rs.1,00,000/-.
(iii)	Loss of marriage prospects	:	Rs. 50,000/-.
(iv)	Amputation of leg below knee and knee dis-articulation	:	Rs.1,50,000/-
	Total	:	Rs.3,50,000/-

17. From the afore noted judicial decisions, a trend which emerges is that between the years 1985 to 1990, Courts have been awarding about Rs.3,00,000/- under the head 'non pecuniary damages' for amputation of leg resulting in permanent disability of 50% and above.

18. In the instant case, Tribunal has awarded Rs.3,25,000/- under the head 'non pecuniary damages'. Thus, award of the Tribunal under the head 'non pecuniary damages'

is just, fair and reasonable.

Pecuniary damages:

19. Tribunal has awarded Rs.7,09,850/- under the head 'pecuniary damages'. Learned counsel for the appellant challenges the award under pecuniary damages on two counts. One, compensation of Rs.25,000/- awarded by the Tribunal for medical expenses is excessive. Two, Tribunal has applied incorrect principles of law while determining compensation to the injured for loss of earning capacity.

20. On the issue of medical expenses, learned counsel contended that injured had placed on record medical bills totaling Rs.1,744/-. But, counsel stated that Tribunal committed an error by awarding Rs.25,000/- to the injured for medical expenses.

21. It is relevant to note that compensation in sum of Rs.1,000/- has been awarded by the Tribunal for future medical expenses.

22. An artificial limb was implanted on his right leg. The same would require replacement every 2 or 3 years.

23. In the decision reported as *Nagappa Vs. Gurudayal Singh* 2003 ACJ 12, noting that artificial leg implanted on the leg of the injured would have to be changed every two to three

years, Supreme Court awarded compensation in sum of Rs.1,00,000/- to meet the said future expenses.

24. Thus, compensation in sum of Rs.1,000/- awarded by the Tribunal for future medical expenses is inadequate.

25. Therefore, I find no infirmity in Tribunal awarding Rs.25,000/- to the injured for medical expenses.

26. Tribunal has awarded Rs.6,76,350/- to the injured for loss of earning capacity.

27. Tribunal has assessed damages for loss of earning capacity by applying the multiplier method.

28. I note that injured had stated that he was a labourer. In absence of any evidence, documentary or otherwise, to establish the earnings of the injured, Tribunal has rightly determined the income of the injured on the basis of the minimum wages notified under the Minimum Wages Act. Tribunal has placed injured in the category of unskilled labour. Minimum wages for an unskilled labour as on 1.2.2003 were Rs.2,783/- per month. This figure has been adopted by the Tribunal as the monthly income of the deceased at the time of the accident.

29. Noting that to neutralize increase in cost of living and price index, minimum wages increased from time to time,

Tribunal has assumed that earnings of the deceased would have doubled by the time he would have left gainful employment. Thus, mean average income of the deceased has been determined as Rs.4,175/- per month.

30. It is now well settled that while estimating future loss of income, the court has to take into account future prospects of the injured (See *K.Narsimha Murthi Vs. The Manager, Oriental Insurance Co. Ltd. & Anr.* 2004 ACJ 1109). Thus, Tribunal has rightly considered future increase in minimum wage while awarding compensation for loss of earning capacity. I note that minimum wage tend to increase by 100% every 10 years.

31. Increase in minimum wages is not akin to future prospects for the reason inflation eats into the purchasing power of the rupee and to neutralise the falling power of the rupee, wages are increased.

32. Considering that the injured was aged 26 years at the time of the accident, multiplier of 18 has been applied by the Tribunal.

33. In the decision reported as *U.P. State Road Transport Corporation Vs. Trilok Chandra & Ors.* (1996) 4 SCC 362, Supreme Court has held that the highest multiplier of 18 has to be applied for the age group of 21 years to 25 years.

34. In the instant case, injured was aged 26 years at the time of the accident. Noting the *Trilok Chandra's* case (supra), correct multiplier in the instant case is 18. Thus, multiplier of 18 adopted by the Tribunal is fair and reasonable.

35. Admittedly, injured had suffered 60% permanent disability. Tribunal has taken functional disability suffered by the injured as 75%. Thus, total compensation is determined by the Tribunal as Rs.4,175 x 12 x 18 x 75% = Rs.6,73,350/-.

36. The question is whether Tribunal is right in assessing functional disability suffered by the appellant as 75%.

37. While estimating future loss of income, the effect of the earning capacity ought to be judged in the light of the importance of the loss of permanently impaired limb in the vocation or profession or employment career of the injured person. The nature of work or business has to be considered and the extent of disablement cannot be indifferent to the nature of the work.

38. In the instant case, injured was working as a labourer. The nature of business of the injured is such that amputation of left leg will seriously hamper his earning capacity as his movement would be restricted.

39. However, in my opinion, functional disability of 75%

as assessed by the Tribunal is on the higher side.

40. At this stage, I note decision of this court in MAC. APP. No. 228/2006, *Oriental Insurance Co. Ltd. vs. Vijay Kumar Mittal* decided on 11.05.2007. In said case, an injured aged 23-24 years sustained grievous injuries in a road accident which occurred on 13.6.2001 resulting of his right leg below knee. Injured was working as a scrap dealer at the time of the accident. Functional disability suffered by the injured was assessed at 60%.

41. Noting the afore-noted decision, functional disability suffered by the injured in the instant case is assessed at 60%.

42. Therefore, loss of earning capacity suffered by the injured comes to Rs.5,41,080/-. (Rs.4,175 X 12 X 18 X 60%)

43. Tribunal has awarded compensation in sum of Rs.6,76,350/- under the head '*loss of earning capacity*'. Thus, compensation under the said head is reduced by a sum of Rs.1,35,270/-.

44. Appeal is accordingly allowed to the extent that compensation as awarded by the Tribunal is reduced by a sum of Rs.1,35,270/-.

45. No costs.

May 15, 2007 PRADEEP NANDRAJOG, J.
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